

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

DEC 11 2014

OFFICE OF
MANAGING DIRECTOR

Nima Mahini
Chief Executive Officer
Distaphone Group LLC
11693 San Vicente Blvd, #393
Los Angeles, CA 90049

Licensee/Applicant: **Distaphone Group LLC**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Fee: Fiscal Year (FY) 2014 Regulatory Fee Late
Fee
Station: N/A
Date Request Filed: Nov. 10, 2014
Date Regulatory Fee Paid: Nov 3, 2014
Date Late Penalty Fee Paid: Nov. 3, 2014
Fee Control No.: RROG-14-00015806

Dear Nima Mahini:

This responds to Licensee's *Request*¹ for waiver and refund of the penalty and charge for collection for late payment of the Fiscal Year (FY) 2014 regulatory fees. As we discuss below, we deny the *Request* because Licensee did not demonstrate either that its failure to pay the FY 2014 regulatory fee when due was the result of bank error or that legal grounds or clear mitigating circumstances exist to waive the penalty and charge for collection.

On November 3, 2014, after the September 23, 2014 due date,² Licensee paid the FY 2014 regulatory fee and accrued statutory penalty³ and charge of collection. On November 10, 2014, Licensee asked that we waive the penalty and charge of collection on the ground that it "never received a notification/invoice ... that [it was] required to pay such fee."⁴ Although Licensee acknowledges the guidance from the Commission's Help Desk that the Commission

¹ Letter from Nima Mahini, Chief Executive Officer, Distaphone Group, LLC, 11693 San Vicente Blvd, #393, Los Angeles, CA 90049 to Marlene Dortch, Secretary, FCC, Office of Managing Director, Regulatory Fee Waiver/Reduction Request, 445 12th St., S.W., Room TW-B204, Washington, DC, 20554 (Nov. 3, 2014; rec'd Nov. 10, 2014) (*Request*).

² See FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET), *Public Notice*, DA 14-1261 (Aug. 29, 2014).

³ 47 U.S.C. § 159(c)(1), 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

⁴ *Request* at 1.

does not send notice or invoices, Licensee asserts the information is “surprising”⁵ and it was not notified of procedure when Licensee applied “for the FRN.”⁶ Finally, Licensee asserts “this is the first year that [Licensee] is in full operation.”⁷

Under 47 U.S.C. § 159 and the Commission’s implementing rules, we are required to “assess and collect regulatory fees” to recover the costs of the Commission’s regulatory activities,⁸ and when the required payment is received late or it is incomplete, to assess a penalty equal to “25 percent of the amount of the fee which was not paid in a timely manner.”⁹ Specifically, “[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”¹⁰

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, and additional charges of interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2014, the deadline for paying regulatory fees was September 23, 2014; however, Licensee did not meet the deadline, rather its payment was credited on November 3, 2014, after the Commission sent a final demand. Now, Licensee requests that we waive and refund the late payment charges on the grounds that it never received a notice or invoice of the fee.¹¹

When we evaluate such matters, we consider whether the *Request* petitioning for a waiver of the statutory penalty and accrued interest, penalty, and charges of collection establishes the existence of bank error¹² or presents legal grounds or clear mitigating circumstances to waive collection of the penalty. Licensee’s *Request* does not.

First, the Commission does not send reminder notices by mail or email, so the absence of such notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.¹³ Repeatedly, the Commission has held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”¹⁴

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁹ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

¹⁰ 47 C.F.R. § 1.1164.

¹¹ *Request*.

¹² 47 C.F.R. § 1.1164.

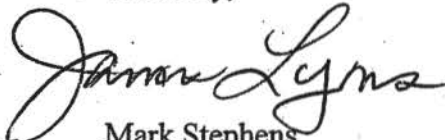
¹³ Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Notice of Proposed Rulemaking and Order*, 24 FCC Rcd 5966, 5972, ¶ 16 (2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2009, *Report and Order*, 24 FCC Rcd 10301, 10307-09, ¶¶ 18-27 (2009); Fee Filer Mandatory for FY 2009 Regulatory Fees, *Public Notice*, 24 FCC Rcd 10893 (Aug. 21, 2009); Assessment and Collection of Regulatory Fees for Fiscal Year 2010, *Report and Order*, 25 FCC Rcd 9278, 9291, ¶ 37 (2010).

¹⁴ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

Next, Licensee did not raise valid grounds for relief. The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission's regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as an employee's inability to perform duties, the amount of time after the deadline within which the regulatee satisfies its payment obligations, or the absence of a reminder notice.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


FOR: Mark Stephens
Chief Financial Officer